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FIRST GENERAL COUNSEL'S REPORT

MUR: 6528
DATE COMPLAINT FILED: February 6, 2012
DATE OF NOTIFICATION: February 9, 2012
DATE OF LAST RESPONSE: July 11, 2012
DATE ACTIVATED: July 3, 2012

ELECTION CYCLE: 2010
EXPIRATION OF STATUTE OF LIMITATIONS:
(Earliest Possible) November 3, 2014

COMPLAINANT: Paul A. Duffy

RESPONDENTS: U.S. Representative Michael Grimm
Michael Grimm for Congress and Lisa Lisker in
her official capacity as treasurer
Ofer Biton
Rabbi Yoshiyahu Yosef Pinto
Mosdot Shuvah Israel Synagogue

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30104(b)(3)(A)¹
52 U.S.C. § 30109(a)(1)
52 U.S.C. § 30116(a)
52 U.S.C. § 30116(f)
52 U.S.C. § 30121
52 U.S.C. § 30122
52 U.S.C. § 30123
52 U.S.C. § 30125(e)
11 C.F.R. § 110.4
11 C.F.R. § 110.6

INTERNAL REPORTS CHECKED: Disclosure reports

FEDERAL AGENCIES CHECKED:

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended, (the "Act") was transferred from Title 2 to new Title 52 of the United States Code.

15004408-1764

I. INTRODUCTION

This matter involves allegations that U.S. Representative Michael Grimm, his campaign committee, and Ofer Biton, an Israeli national working with Grimm, solicited and received contributions from members of the Mosdot Shuva Israel global ministry in New York City that violated various provisions of the Act. Specifically, the Complaint alleges that Biton, Grimm, and Grimm's campaign committee solicited and received contributions that were in excess of the Act's limitations, in cash amounts exceeding \$100, from foreign nationals, and in the names of others.

For the reasons described at greater length below, we conclude that there is reason to believe that the alleged conduct here may give rise to solicitation, contribution, and reporting violations and recommend that the Commission conduct an investigation to obtain additional relevant information concerning the contributions at issue.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

I. Fundraising for Michael Grimm for Congress

Grimm represents New York's 11th Congressional District, which encompasses Staten Island and part of Brooklyn. Grimm is running for reelection in 2014. Michael Grimm for Congress and Lisa Lisker in her official capacity as treasurer (the "Committee") is Grimm's principal campaign committee.

Relying extensively on a January 28, 2012 article published in *The New York Times*,² the Complaint alleges that in his first election in 2010, Grimm aggressively solicited contributions

² Alison Leigh Cowan and William K. Rashbaum, *Rabbi's Followers Cast Doubt on Congressman's Fund-Raising*, N.Y. TIMES, Jan. 28, 2012, at A1, attached to the Complaint as Exhibit 1 ("Ex. 1").

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1 from members of Mosdot Shuva Israel ("Mosdot"), which had a large presence in Grimm's
2 district.³ To facilitate his fundraising efforts with members of Mosdot, Grimm approached
3 Biton, who was then a top aide to Mosdot's leader, Rabbi Yoshiyahu Yosef Pinto.⁴ According to
4 Yossi Zaga, one of Pinto's followers, "Grimm and Biton were together all the time during the
5 campaign They would drive around together to the homes and offices and ask for
6 contributions."⁵ Biton helped Grimm and the Committee to receive more than \$500,000 from
7 Pinto's followers.⁶ Pinto's followers reportedly contributed to the Committee because Biton told
8 them that Pinto wanted them to do so.⁷

9 The Complaint describes two particular prohibited contributions. *First*, the Complaint
10 alleges that Grimm solicited a \$20,000 contribution and later accepted a \$5,000 cash contribution
11 from a contributor ("Unknown Respondent A"), and that Grimm then repeatedly pressured the
12 same contributor to provide an additional \$10,000.⁸ The Complaint also alleges that Grimm's
13 campaign committee subsequently improperly reported that contribution.⁹

14 *Second*, the Complaint alleges that Biton facilitated and Grimm accepted \$25,000 for the
15 Committee from a single Israeli ("Unknown Respondent B"), and the Committee misreported it

³ Compl. ¶ 5 (Feb. 6, 2012).

⁴ *Id.* ¶¶ 6, 8; Ex. 1 at 1. Biton purportedly assisted Grimm in the hope that Grimm would help him obtain a green card if Grimm was elected. Compl. ¶ 7; Ex. 1 at 3.

⁵ Ex. 1 at 2; Compl. ¶ 8.

⁶ Ex. 1 at 1.

⁷ *Id.* at 3.

⁸ Compl. ¶¶ 12-13; Ex. 1 at 2. Unknown Respondent A reportedly stated that Grimm pressed him for \$20,000, and instructed him to meet Grimm "near the FBI building" in Lower Manhattan in summer 2010 to give Grimm the money. Compl. ¶ 12; Ex. 1 at 2. Unknown Respondent A said that he handed an envelope containing \$5,000 cash to Grimm in Grimm's car. Compl. ¶ 12; Ex. 1 at 2.

⁹ Compl. ¶ 14.

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1 as contributions from at least five other individuals.¹⁰ Allegedly, at Biton's behest, one of
2 Pinto's followers ("Unknown Respondent C"), received the checks from Unknown Respondent
3 B and transferred them to Biton.¹¹ Biton then provided the checks to Grimm.¹² Unknown
4 Respondent C told the *Times*, "I give the checks to Ofer, and he gives them to Michael[.]""¹³

5 The Complaint also describes Grimm's improper solicitation of another contribution.
6 Relying on the same press report, the Complaint alleges that while Grimm visited the office of a
7 Mosdot member to collect a lawful contribution he explained how to circumvent campaign
8 finance rules to contribute to the Committee:¹⁴

9 Grimm wanted you to supply the money, and if someone wants to give
10 and cannot give you have to find a friend to give it through Let's say
11 someone is not legal to give because he's not American. Grimm wants
12 this guy, Joe A, to give the money to Joe B so Joe B can make the
13 contribution to the campaign.¹⁵
14

15 2. The Responses Do Not Rebut the Complaint's Allegations

16 Neither Grimm in his personal capacity, nor Pinto or Mosdot responded to the Complaint.
17 Only the Committee and Biton submitted Responses to the Commission, but neither Response
18 addresses the substance of the allegations in the Complaint. Instead, both Responses claim that
19 the Complaint is insufficient because it relies on information provided by unnamed sources
20 published in the *Times* article.

¹⁰ *Id.* ¶¶ 15-17; Ex. 1 at 3.

¹¹ Compl. ¶ 15; Ex. 1 at 3.

¹² Compl. ¶ 15; Ex. 1 at 3.

¹³ Compl. ¶ 15; Ex. 1 at 3.

¹⁴ Compl. ¶ 18; Ex. 1 at 2.

¹⁵ Compl. ¶ 18; Ex. 1 at 2.

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1 Nevertheless, both Grimm and Biton have addressed the allegations in the media. Grimm
2 wrote in a personal e-mail responding to the *Times*' report that, "'At first, I thought it was a joke
3 because the allegations are so absurd and ridiculous. . . . But let me be very clear, the
4 information you received is completely false and I know is unsubstantiated, thus completely unfit
5 to print.'"¹⁶ Grimm later reiterated through his lawyer that he had never violated campaign
6 finance rules.¹⁷ And roughly one week after the *Times* article was published, Grimm "issued a
7 full-throated self-defense" in an interview with the *Staten Island Advance*:

8 I never took any illegal cash contributions. Ever. . . . I never conspired or
9 coordinated or ever in any way discussed funneling illegal contributions.
10 It is absolute nonsense. . . . Not only are they saying I'm a criminal,
11 they're saying I'm a very stupid criminal Everyone knows that [the
12 FBI] building is under surveillance for blocks. So why would I go where
13 there's surveillance to do a criminal act? That's why I'm saying it's
14 preposterous.¹⁸

15
16 Grimm later reiterated his position, "As I stated publicly in February, Mr. Biton was Rabbi
17 Pinto's right-hand assistant and he was not my fundraiser. Any donations that I received from
18 followers of the Rabbi were respectfully and legally obtained."¹⁹ Grimm's denials do not
19 specifically state that all of the contributions that his 2010 campaign received were from
20 permissible sources.

¹⁶ Ex. 1 at 3.

¹⁷ *Id.*

¹⁸ Tom Wroblewski, *Defiant Staten Island Rep. Michael Grimm Predicts Voters Will Return Him to Office*,
STATEN ISLAND ADVANCE, Feb. 2, 2012, http://www.silive.com/news/index.ssf/2012/02/defiant_staten_island_rep_mich.html.

¹⁹ Tom Wroblewski, *It's Staten Island's Grimm and Murphy — and Lots of Mud*, STATEN ISLAND ADVANCE,
Aug. 21, 2012, http://www.silive.com/news/index.ssf/2012/08/its_staten_islands_grimm_and_m.html.

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1 Biton, through his then-attorney, Jeffrey Udell, denied to the *Times* that he had ever
2 raised money for Grimm or that he had picked up checks for the Committee.²⁰ Later, Biton's
3 attorney responded to media inquiries by "unequivocally den[ying] any knowledge of, or
4 participation in, the alleged violation of campaign finance laws."²¹

5 3. The Pending Parallel Investigations of Grimm, Biton, Pinto, and a 2010-
6 Cycle Grimm Fundraiser

7
8 the Commission approved holding this matter in abeyance on
9 November 1, 2012.²² Since that time, Biton pleaded guilty to charges that he made false
10 statements in connection with his non-permanent visa.²³ And on April 25, 2014, a federal grand
11 jury in the Eastern District of New York returned a twenty-count indictment against Grimm
12 charging perjury and tax fraud, among other violations.²⁴ None of the charges relate to
13 violations of the Act, however, despite news reports that the grand jury had sought information

²⁰ Compl. Ex. at 4.

²¹ Tom Wroblewski, *Under Attack, Rep. Michael Grimm Fires Back*, STATEN ISLAND ADVANCE, Feb. 19, 2012, http://www.silive.com/news/index.ssf/2012/02/under_attack_rep_michael_grimm.html.

²² See Info. Memo to Comm'n, MUR 6528 (Oct. 23, 2012); Cert., MUR 6528 (Nov. 1, 2012). Given the possible limitations issues arising in this matter, we believe further abatement is no longer advisable.

²³ See Info. Memo to Comm'n, MUR 6528 (Sept. 20, 2013). In addition to the allegations contained in the *Times* article, Biton is also alleged to have embezzled or extorted millions of dollars from Mosdot. Alison Leigh Cowan, *Followers of Rabbi Blame an Ex-Aide for a Congregation's Missing Millions*, N.Y. TIMES, Dec. 21, 2011, at A35 (N.Y. Ed.). Biton's criminal complaint, however, relates only to false statements, and does not allege that Biton stole any funds from Mosdot or violated the Act.

²⁴ Indictment, *United States v. Grimm*, 1:14-cr-00248 (filed Apr. 25, 2014) (charging Grimm with tax and employment violations in connection with Grimm's 45% ownership of a health food restaurant in Manhattan and obstruction of justice for lying about those alleged violations under oath).

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1 from at least four members of Grimm's campaign staff.²⁵ Jury selection and a trial to resolve the
2 indictment against Grimm is scheduled to begin February 2, 2015.²⁶

3 In addition to the criminal matters involving Biton and Grimm, Diana Durand, one of
4 Grimm's fundraisers from the 2010 campaign, was indicted for allegedly violating sections 441a
5 and 441f (recodified at sections 30116 and 30122) of the Act, as well as making materially false
6 statements to the FBI.²⁷ On September 3, 2014, Durand pleaded guilty to reimbursing more than
7 \$10,000 to contributors to the Committee.²⁸ In statements to the press after Durand entered her
8 plea, Durand's counsel denied that Grimm had any knowledge of Durand's conduct.²⁹

9 Rabbi Pinto also has been the subject of a criminal investigation in Israel concerning
10 alleged money laundering and bribery, and recently was indicted in Israel in connection with
11 those allegations.³⁰

²⁵ See Celeste Katz, *FBI Questions Four (Or More) In Rep. Michael Grimm Campaign Donations Investigation*, N.Y. DAILY NEWS, June 20, 2012, <http://www.nydailynews.com/blogs/dailypolitics/fbi-questions-rep-michael-grimm-campaign-donations-investigation-blog-entry-1.1690883>; Kevin Robillard, *Report: Grand Jury Probing Michael Grimm*, POLITICO, July 20, 2012, <http://www.politico.com/news/stories/0712/78751.html>.

²⁶ Minute Entry for Proceedings Held Before Judge Pamela K. Chen, *United States v. Grimm*, 1:14-cr-00248 (Oct. 21, 2014).

²⁷ Indictment, *United States v. Durand*, 1:14-cr-00247, Apr. 25, 2014 (indicting Durand, Grimm's former girlfriend, on three counts: (1) knowingly and willfully making more than \$2,000 in excessive campaign contributions to the Committee; (2) knowingly and willfully making more than \$10,000 of campaign contributions in the names of others to the Committee and another federal committee; and (3) knowingly and willfully making materially false statements to the Federal Bureau of Investigation regarding her reimbursement of straw donors).

²⁸ See, e.g., Associated Press, *Rep. Michael Grimm's Ex-Girlfriend Diana Durand Pleads Guilty, Admits Illegal Campaign Contributions*, Syracuse.com, Sept. 3, 2014, http://www.syracuse.com/news/index.ssf/2014/09/rep_michael_grimms_ex-girlfriend_diana_durand_pleads_guilty_admits_illegal_campa.html; Jillian Jorgensen, *Diana Durand Pleads Guilty to Illegal Michael Grimm Campaign Contributions*, N.Y. OBSERVER, Sept. 3, 2014, <http://observer.com/2014/09/diana-durand-pleads-guilty-in-michael-grimm-straw-donor-scheme/>.

²⁹ *Rep. Michael Grimm's Ex-Girlfriend Diana Durand Pleads Guilty, Admits Illegal Campaign Contributions*, Syracuse.com (noting that defense counsel stated that "email and other evidence turned over to the defense supported [Durand's] contention that she acted alone").

³⁰ Yonah Jeremy Bob, *Court Indicts Rabbi Pinto as Part of Plea Bargain in Bribery Case*, JERUSALEM POST, Sept. 17, 2014, <http://www.jpost.com/Israel-News/Rabbi-Pinto-state-expected-to-scal-deal-to-testify-against-former-head-of-Israeli-FBI-375573>; Alison Leigh Cowan, *Rabbi Linked to Campaign Inquiry Is Questioned in Israeli Bribe*

1 Finally, on February 9, 2012, the Office of Congressional Ethics ("OCE") received a
2 complaint alleging that Grimm used Biton to raise campaign contributions in return for a promise
3 to assist Biton with his immigration status.³¹ Reportedly because the conduct occurred before
4 Grimm became a member of Congress — and thus fell outside OCE's jurisdiction — OCE
5 dismissed the allegations against Grimm.³² Nonetheless, the House Ethics Committee appears to
6 have kept the file open and abated the matter in light of the pending criminal investigation.³³

7 **B. Legal Analysis**

8 1. The Alleged Contributions and Their Solicitation, Acceptance, and
9 Misreporting All Apparently Violated the Act

10 The Act imposes limitations and restrictions on who may contribute to a federal
11 committee, and how much a person can contribute. Only U.S. citizens and permanent residents
12 may contribute in connection with a federal, state, or local election.³⁴ In the 2010 election cycle,
13 a person could contribute a maximum of \$2,400 per election,³⁵ but no more than \$100 of the
14 contribution for each election can be made in cash.³⁶ The Act also prohibits contributions in the
15 name of another, including the making of the contribution, permitting one's name to be used to

Case, N.Y. TIMES, Oct. 12, 2012, http://www.nytimes.com/2012/10/13/nyregion/rabbi-pinto-fund-raiser-for-grimm-under-house-arrest-in-israel.html?_r=2&.

³¹ See Letter from Melanie Sloan, Executive Director, Citizens for Responsibility and Ethics in Washington, to Omar Ashmawy, Staff Director and Chief Counsel, Office of Congressional Ethics (Feb. 9, 2012).

³² John Brensahan, *Michael Grimm Cleared by Ethics Watchdog*, POLITICO, July 17, 2012, <http://www.politico.com/news/stories/0712/78590.html>.

³³ See John Brensahan, *Ethics Panel Defers Michael Grimm Probe*, POLITICO, June 25, 2014, <http://www.politico.com/story/2014/06/michael-grimm-house-ethics-108324.html>.

³⁴ 52 U.S.C. § 30121(a)(1), (b) (formerly 2 U.S.C. § 441e(a)(1), (b)); 11 C.F.R. § 110.20(b).

³⁵ 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a(a)) (limiting contributions for the 2009-10 election cycle to \$2,400 per election).

³⁶ *Id.* § 30123 (formerly 2 U.S.C. § 441g); 11 C.F.R. § 110.4(c)(1) (prohibiting persons from making cash contributions in excess of \$100).

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1 effect such a contribution, or helping or assisting any person in making a contribution in the
2 name of another.³⁷

3 The Act also imposes corresponding restrictions on candidates, committees, and their
4 agents, and proscribes the solicitation, direction, receipt, and acceptance of contributions from
5 prohibited sources — including foreign nationals, made in the name of another, or that exceed
6 the Act's limits.³⁸ Commission regulations define "solicit" as "to ask, request, or recommend,
7 explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or
8 otherwise provide anything of value."³⁹ Commission regulations define "direct" as "to guide,
9 directly or indirectly, a person who has expressed an intent to make a contribution, donation or
10 transfer of funds, or otherwise provide anything of value, by identifying a candidate, political
11 committee or organization, for the receipt of such funds, or things of value."⁴⁰ The Act also
12 requires that committees accurately report their receipt of contributions.⁴¹

³⁷ 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f); 11 C.F.R. § 110.4(b)(i)-(iii).

³⁸ 52 U.S.C. §§ 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)) (prohibiting a federal officeholder, candidate, candidate committee, and its agents from soliciting, receiving, directing, transferring, or spending funds in connection with an election for federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act), 30121(a)(2) (formerly 2 U.S.C. § 441e(a)(2)) (prohibiting a person from soliciting, accepting, or receiving a contribution made in connection with an election from a foreign national), 30116(f) (formerly 2 U.S.C. § 441a(f)) (prohibiting a candidate, committee, and its officers or employees from knowingly accepting excessive contributions); 11 C.F.R. §§ 110.4(b)(1)(iv) (prohibiting persons from knowingly accepting a contribution made by one person in the name of another), 110.4(c)(2) (requiring a candidate or committee who receives a cash contribution in excess of \$100 to return the amount over \$100 to the contributor).

³⁹ 11 C.F.R. § 300.2(m).

⁴⁰ *Id.* § 300.2(n).

⁴¹ 52 U.S.C. § 30104(b)(3)(A) (formerly 2 U.S.C. § 434(b)(3)(A)) (requiring an authorized committee of a candidate for federal office to report the identification of each person who makes a contribution to it in an aggregate amount of \$200 or more per election cycle, along with the date and amount of the contribution); 11 C.F.R. § 110.6(c)(2) (requiring recipient committee to report the conduit who forwards earmarked contributions that exceed an aggregate of \$200 in any calendar year).

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a. Unknown Respondent A and the \$5,000 Cash Contribution

The conduct described in the Complaint reasonably suggests that Grimm, the Committee, and Unknown Respondent A each may have violated several provisions of the Act in connection with the solicitation, making, and receipt of an alleged \$5,000 cash contribution detailed in the Complaint and its supporting materials.

First, Unknown Respondent A's reported admission that he gave Grimm \$5,000, if true, reflects that he both exceeded the \$100 cash-contribution per election limit and that his contribution exceeded the combined primary and general elections limit of \$4,800 by \$200, even assuming that Unknown Respondent A had not previously or subsequently donated to Grimm's campaign. We therefore recommend that the Commission find reason to believe that Unknown Respondent A violated 52 U.S.C. § 30016(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)) for making an excessive contribution and 52 U.S.C. § 30123 (formerly 2 U.S.C. § 441g) and 11 C.F.R. § 110.4(c)(1) for contributing more than \$100 in cash.

Second, Grimm allegedly requested \$20,000 from Unknown Respondent A, which, if true reflects that Grimm solicited a contribution that exceeded the Act's limits by at least \$15,200. Grimm also allegedly accepted the \$5,000 contribution from the same individual, of which at least \$200 was excessive. Although Grimm denied to the press that he accepted illegal cash contributions,⁴² those statements were made without any legal obligation for truthfulness.⁴³ The Responses submitted to the Commission do not rebut any of these factual assertions. Accordingly, based on the record currently before the Commission concerning that exchange, it

⁴² Tom Wroblewski, *Defiant Staten Island Rep. Michael Grimm Predicts Voters Will Return Him to Office*, STATEN ISLAND ADVANCE, Feb. 2, 2012, http://www.silive.com/news/index.ssf/2012/02/defiant_staten_island_rep_mich.html. (quoting Grimm as stating, "I never took any illegal cash contributions. Ever . . .")

⁴³ See *infra*, Part II.B.3.

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1 appears that Grimm solicited an excessive contribution in violation of 52 U.S.C.
2 § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)). Hence, with respect to Grimm and the
3 Committee, we recommend that the Commission find reason to believe that Grimm and the
4 Committee violated 52 U.S.C. §§ 30125(e)(1)(A) and 30116(f) (formerly 2 U.S.C.
5 §§ 441i(e)(1)(A) and 441a(f)) for soliciting and receiving⁴⁴ excessive contributions from
6 Unknown Respondent A, and 11 C.F.R. § 110.4(c)(2) for failing to return \$4,900 of the cash
7 contribution to Unknown Respondent A. We also recommend that the Commission find reason
8 to believe that the Committee improperly reported Unknown Respondent A's contribution in
9 violation of 52 U.S.C. § 30104(b)(3)(A) (formerly 2 U.S.C. § 434(b)(3)(A)), because none of the
10 Committee's reports covering the summer of 2010 disclose receipt of a \$5,000 contribution from
11 a single individual.

12 b. Grimm's Other Allegedly Unlawful Solicitations

13 The Complaint's separate allegation that Grimm solicited other contributions for the
14 Committee from foreign nationals by explaining to prospective contributors how to circumvent
15 campaign finance rules, such as making contributions in the name of another, further supports a
16 finding by the Commission that there is reason to believe that Grimm and the Committee
17 violated 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)). As one of Pinto's
18 followers who contributed to the Committee reportedly stated, "Grimm wanted you to supply
19 the money. and if someone wants to give and cannot give, you have to find a friend to give it
20 through Let's say someone is not legal to give because he's not American. Grimm wants
21 this guy, Joe A, to give the money to Joe B so Joe B can make the contribution to the

⁴⁴ A candidate who receives a contribution is considered to have received the contribution as an agent of his authorized committee. 52 U.S.C. § 30102(e)(2) (formerly 2 U.S.C. § 432(e)(2)).

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1 campaign.⁴⁵ Grimm's explanation of how to circumvent campaign finance rules is a
2 solicitation of a contribution in violation of 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C.
3 § 441i(e)(1)(A)), both because it was made to a contributor who had already contributed the
4 maximum amount permitted and because it solicited a contribution in the name of another and
5 also possibly from a foreign national.

6 c. The Alleged \$25,000 Contribution from Unknown Respondent B,
7 an Israeli National, Conveyed Through Unknown Respondent C

8 The Complaint further alleges that Unknown Respondent C transferred to Biton \$25,000
9 in contributions from Unknown Respondent B, an Israeli,⁴⁶ and Grimm and the Committee
10 accepted and falsely reported that it received those funds in the names of at least five other
11 individuals. Those allegations are premised on reported statements of witnesses with apparent
12 personal knowledge of the events, and at present stand un rebutted.⁴⁷ As such, we also
13 recommend that the Commission find reason to believe that Unknown Respondent B made a
14 contribution as a foreign national and that Biton, Grimm, and the Committee accepted or
15 received such a contribution, each in violation of 52 U.S.C. §§ 30121 and 30116 (formerly
16 2 U.S.C. §§ 441e and 441a).⁴⁸

⁴⁵ Compl. ¶ 18; Ex. 1 at 2.

⁴⁶ While it is possible that Unknown Respondent B is a citizen or a lawful permanent resident of the United States, because he is described in the record only as an "Israeli," we reasonably infer that Unknown Respondent B is a "foreign national" under 52 U.S.C. § 30121(b) (formerly 2 U.S.C. § 441e(b)), and is therefore prohibited from contributing to the Committee.

⁴⁷ See *infra*. Part II.B.3. Biton's previous counsel, however, had stated to the *Times*, "Did [Biton] pick up checks from Grimm's campaign, and the answer is categorically no." Ex. 1 at 3.

⁴⁸ The Complaint separately alleges that when Biton, a foreign national, accompanied Grimm during fundraising, introduced Grimm to prospective donors, and solicited and accepted contributions for the Committee, he provided something of value to Grimm and the Committee in violation of 2 U.S.C. § 441e (recodified at 52 U.S.C. § 30121). Compl. ¶¶ 8-9. But the Act does not support allegations that Biton's mere involvement with the Grimm campaign violated the Act because Biton is a foreign national. While the Act prohibits foreign nationals from making contributions, foreign nationals may volunteer to engage in activities beneficial to a campaign. See Advisory Op. 2007-22 (Hursysz) (approving volunteer activity by foreign national); Advisory Op. 2004-26

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Moreover, Grimm's statements to one of Pinto's followers that a foreign national could contribute to his campaign by passing funds through an American citizen⁴⁹ reflect that Grimm was aware both of the Act's prohibition and how to circumvent it. Grimm also appears to have received checks directly from Biton.⁵⁰ Taken together, these facts provide reason to believe that Grimm knew or should have known that he and the Committee received prohibited contributions. Therefore, we recommend that the Commission find that Grimm and the Committee knowingly accepted the \$25,000 in violation of 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) and 11 C.F.R. § 110.4(b)(iv), and improperly reported it as having been made by at least five other people in violation of 52 U.S.C. § 30104(b)(4)(A) (formerly 2 U.S.C. § 434(b)(4)(A)) and 11 C.F.R. § 110.6(c)(2).

In addition, Unknown Respondent B, a foreign national, allegedly provided the \$25,000 contribution in the name of another, while Unknown Respondent C helped or assisted in making that contribution in the name of another by passing that \$25,000 from Unknown Respondent B to Biton. That transaction appears to have been undertaken at Biton's direction.⁵¹ Accordingly, we also recommend that the Commission find reason to believe that Unknown Respondent B, Unknown Respondent C, and Biton each violated 2 U.S.C. § 441f, that Unknown Respondent C

(Weller) (approving volunteer activity by foreign national, including solicitation of lawful contributions); Advisory Op. 1987-25 (Otaola) (approving volunteer activity by foreign national student). Because the record here suggests that Biton assisted Grimm on a volunteer basis, his uncompensated activity on behalf of Grimm and the Committee does not appear to have violated section 30121 (formerly section 441e) of the Act.

⁴⁹ Compl. ¶ 18; Ex. 1 at 2.

⁵⁰ Compl. ¶ 15; Ex. 1 at 3 (Unknown Respondent C received \$25,000 from a foreign national and transferred it to Biton, who transferred it to Grimm: "I give the checks to Ofer, and he gives them to Michael").

⁵¹ With respect to this allegation, the Commission should consider Biton's guilty plea for concealing the true source of investment funds related to his visa application. Biton's actions related to his immigration visa buttress the allegations in the Complaint that he worked with Grimm to prevent disclosure of the true source of contributions to the Committee — that Biton allegedly lied about the source of funds for his visa suggests that he also was willing to obscure the true source of funds contributed to Grimm.

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1 and Biton further violated 11 C.F.R. § 110.4(b)(iii), and that Biton violated 52 U.S.C.
2 § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)) by receiving and transferring funds that
3 did not comply with the Act's limitations and prohibitions.⁵²

4 Unknown Respondent C's statement that "I give the checks to Ofer, and he gives them to
5 Michael" would, if true, also implicate Biton as a conduit or intermediary who is himself
6 prohibited from making a contribution, a violation of 11 C.F.R. § 110.6(b)(2)(ii). Biton has
7 publicly denied that he received checks for the Grimm campaign, although that denial was issued
8 through his then-attorney to the press. At this point, the record fairly establishes that Biton
9 helped or assisted others in making contributions in the names of others; but it is less clear how
10 Biton may have participated in this scheme, including whether he actually served as a conduit or
11 intermediary. Because we anticipate that our proposed investigation may illuminate the nature of
12 Biton's involvement, we recommend that the Commission take no action at this time regarding
13 the allegations that Biton violated 11 C.F.R. § 110.6(b)(2)(ii).⁵³

14 d. Allegations as to Rabbi Pinto and Mosdot

15 At this point, we do not have information related to the involvement, if any, of Rabbi
16 Pinto or Mosdot beyond the allegations that members of the congregation were involved in the
17 reimbursement scheme at issue. Any investigation will necessarily develop facts related to the
18 involvement of Pinto or the congregation itself. Accordingly, we recommend that the

⁵² See MUR 6234 (Arlen Cenac) (finding reason to believe that unknown respondent violated 2 U.S.C. § 441f (recodified at 52 U.S.C. § 30122) based on Committee's receipt of six sequentially numbered cashier's checks); MUR 5871 (Thomas Noe) (finding reason to believe against both Thomas Noe, the source of funds in a scheme violating 2 U.S.C. § 441f (recodified at 52 U.S.C. § 30122), and "unknown respondents" who served as Noe's conduits in the scheme).

⁵³ The Complaint alleges that Biton and the Committee violated the provisions of 11 C.F.R. § 110.6(c)(2) by failing to report Biton as a conduit or intermediary for these contributions. Compl. ¶¶ 16, 34-35. Here, the prohibition against Biton acting as a conduit or intermediary, rather than the reporting requirement, is applicable.

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Commission take no action at this time with respect to both Pinto and Mosdot, pending our proposed investigation into the contributions at issue.

2. Grimm, the Committee, and Biton Appear to Have Knowingly and Willfully Violated the Act

A violation of the Act is knowing and willful if the "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law."⁵⁴ This standard does not require knowledge of the specific statute or regulation that the respondent allegedly violated.⁵⁵ Instead, it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his conduct was unlawful."⁵⁶ This may be shown by circumstantial evidence from which the respondents' unlawful intent reasonably may be inferred.⁵⁷

The alleged solicitation and acceptance of excessive contributions and contributions from foreign nationals by the Committee, Grimm, and Biton appear to have been knowing and willful violations of the Act. Grimm expressly articulated to prospective contributors how to circumvent the Act's restrictions and limitations.⁵⁸ And because Biton orchestrated at least one contribution from a foreign national and frequently traveled with Grimm to solicit and collect

⁵⁴ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

⁵⁵ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

⁵⁶ *Id.* (citing jury instructions in *United States v. Edwards*, No. 1:11-CR-161 (M.D.N.C. May 18, 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. June 2, 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. Oct. 7, 2005)).

⁵⁷ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁵⁸ Compl. ¶ 18; Ex. 1 at 2.

1 contributions from Mosdot members,⁵⁹ there is reason to believe that Biton also knowingly and
2 willfully violated the Act. Accordingly, we recommend that the Commission find that the
3 Committee, Grimm, and Biton knowingly and willfully violated the Act.

4 3. The Complaint Is Legally and Factually Sufficient to Proceed and the
5 Allegations Warrant Further Commission Fact Finding and Review

6 The Responses filed by the Committee and Biton do not directly address the information
7 recounted in the Complaint, or deny that the contributions at issue may have been obtained from
8 prohibited sources or made in the names of others. Instead, the Responses contend that the
9 Complaint provides an insufficient basis for the Commission to make a reason to believe finding
10 because it arises from information provided by unnamed or anonymous sources in the underlying
11 press article that recounts the claims.⁶⁰ This contention misconstrues the relevant standards.

12 The Act requires that a complaint filed with the Commission be in writing, signed, and
13 sworn.⁶¹ But there is no requirement that complaints must be based only on personal knowledge.
14 Indeed, the Commission's regulations expressly provide the contrary: a complainant may allege
15 a violation of the Act "based upon information and belief."⁶² The fact that the Complainant's

⁵⁹ Compl. ¶¶ 8-9, 15; Ex. 1 at 3.

⁶⁰ Biton Resp. at 5 (July 11, 2012); Comm. Resp. at 5 (Mar. 27, 2012) (Complainant "simply attaches and repackages the anonymously sourced New York Times article to submit frivolous complaints against the Respondents about subjects as to which the complainant has no knowledge whatsoever apart from the dubious information he has obtained from the Times.").

⁶¹ 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)).

⁶² 11 C.F.R. § 111.4(c), (d); *see also* Guidebook for Complainants and Respondents on the FEC Enforcement Process at 6 (May 2012) ("Statements not based on personal knowledge should identify the source of the information."); Mem. to the Comm'n from William C. Oldaker, General Counsel, FEC, *Complaints Based on News Articles* at 2 (Nov. 5, 1979) (Comm'n Mem. No. 663) (adopted Nov. 15, 1979) ("[T]he legislative concern that complaints not be frivolous or malicious would seem to not preclude those complaints based on news articles which were well-documented and substantial, if the other complaint filing criteria of signing and notarization were met.").

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1 information and belief rest on unnamed or anonymous sources quoted in the press "does not in
2 and of itself render the complaint insufficient on its face."⁶³

3 Here, the Complaint meets or exceeds the basic requirements stated in the Act and
4 Commission regulations. It includes the Complainant's name and address, was signed and sworn
5 to before a notary, and does not purport to make his allegations on the basis of personal
6 knowledge. The Complaint here does not recite mere conclusory assertions of possible
7 violations; it outlines a sufficient factual predicate for the Respondents to understand what
8 conduct allegedly violated the Act,⁶⁴ and does so on the basis of "information and belief."⁶⁵
9 Moreover, the Complaint identifies "a source of information that reasonably gives rise to a belief
10 in the truth of the allegations presented."⁶⁶ Accordingly, the Complaint is more than adequate to
11 satisfy the Act and Commission regulations at this stage: it provides a sufficient basis to assess
12 whether there is a reason to believe that the alleged violations may have occurred and warrant
13 further investigation.⁶⁷

14 And although Grimm and Biton made statements to the media about the allegations, those
15 statements do not provide a compelling refutation of the allegations. Grimm publicly asserted
16 that the *Times* piece is "false" and "unsubstantiated" and attacked the plausibility of accepting

⁶³ Factual and Legal Analysis at 8 n.5, MUR 6276 (Weiser, *et al.*) (May 6, 2011) (citing MUR 6023 (McCain/Loeffler Group)). In MUR 6276, the Commission concluded that the "unequivocal," "specific" statements contained in 17 sworn affidavits rebutted allegations made by a single anonymous source. *Id.* at 3, 5, 9. By contrast, here, Respondents submitted no affidavits.

⁶⁴ 11 C.F.R. § 111.4(d)(3).

⁶⁵ Compl. ¶ 14.

⁶⁶ Statement of Reasons. Comm'rs Mason, Sandstrom, Smith, and Thomas, MUR 4960 (Hillary Rodham Clinton).

⁶⁷ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 1,2545 (Mar. 16, 2007). Alternatively, "[i]f the Commission should deem that a complaint and its accompanying news article is too insubstantial to warrant investigation, then the Commission can render a finding of 'no reason to believe.'" Comm'n Memo No. 663 at 3.

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1 prohibited cash contributions in front of the FBI building. Yet none of Grimm's general denials
2 purport to refute that Biton sought to hide the true source of Unknown Respondent C's \$25,000
3 contribution. As for Biton, his lawyer issued a statement claiming that Biton did not pick up
4 checks for Grimm, but the statement only denies one way by which Biton may have arranged or
5 assisted in the making of prohibited contributions.⁶⁸ Neither Grimm's nor Biton's general
6 denials to the press contain any specific information adequate to refute the acts alleged by
7 Unknown Respondent C. Nor are the denials so broad as to address the variety of ways in which
8 the Complaint alleges that Grimm, the Committee, and Biton violated the Act. And although the
9 Commission has found no reason to believe in connection with news-based complaints where the
10 respondents have *directly* denied allegations, often through the submission to the Commission of
11 sworn affidavits, no such contrary evidence is available here.⁶⁹ Moreover, Biton's credibility is
12 itself undermined by his sworn admission in connection with his guilty plea that he made
13 fraudulent statements on his visa application. Similarly, the veracity of Grimm's statements to
14 the press may also be discounted if Grimm is found guilty of perjury or tax fraud, both of which
15 directly implicate his credibility.⁷⁰

⁶⁸ That statement, if true, may refute allegations that Biton impermissibly solicited campaign contributions from foreign nationals in violation of 52 U.S.C. § 30121(a)(2) (formerly 2 U.S.C. § 441e(a)(2)). But the prohibition against contributions in the name of another extends beyond merely bundling or passing checks. See 11 C.F.R. § 110.4(b)(iii) ("No person shall — Knowingly help or assist any person in making a contribution in the name of another.").

⁶⁹ See Factual and Legal Analysis at 5, MUR 6503 (Guinta) (concluding that allegations based on double hearsay of "newspaper article — when viewed alongside the sworn denial of Congressman Guinta — simply do not provide an adequate foundation for a finding that there is reason to believe"); MUR 6276 (Weiser) (concluding that Responses and sworn affidavits sufficiently rebutted allegations resting on news story with anonymous source); First Gen. Counsel's Rpt., MUR 6296 (Kenneth R. Buck) (recommending that the Commission find no reason to believe where Response and affidavits directly and sufficiently rebutted allegations of Complaint).

⁷⁰ Federal Rule of Evidence 609(a)(2) permits the fact finder to consider a defendant's prior conviction if that conviction required proving the defendant's dishonest act or false statement. Nonetheless, the Commission is not bound by the Rules of Evidence in its fact-finding processes and may consider the charges for which Grimm has been indicted in assessing whether the veracity of his public, unsworn denials persuasively rebut the allegations of the Complaint at this preliminary stage.

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1 Furthermore, an e-mail that Grimm reportedly sent to Mosdot on October 18, 2010,
2 soliciting contributions of \$10,000 from six members of Rabbi Pinto's congregation tends to
3 corroborate the Complaint's allegations that Grimm may have solicited prohibited contributions
4 from members of Mosdot in violation of the Act.⁷¹ Thus, in light of all the circumstances
5 presented in this matter — including the parallel proceedings concerning similar allegations of
6 fraud and false statements into many of the same individuals who are alleged participants here,
7 as well as Grimm's reported e-mail solicitation of excessive contributions — the information
8 relayed by Unknown Respondents A and C and relied upon in the sworn Complaint appears at
9 least adequate to establish a reasonable belief that the Committee, Grimm, and Biton may have
10 violated the Act at this preliminary stage of the Commission's fact-finding process.

11 Indeed, the Commission has recognized that well-documented news articles — such as
12 the series describing the Watergate scandal that prompted Congress to form the Commission and
13 which relied heavily on unnamed sources — may provide an adequate basis to open an
14 investigation.⁷² Just as *The Washington Post's* recitation of information obtained from
15 anonymous sources such as "Deepthroat" could give rise to a reasonable belief that a violation
16 may have occurred warranting further inquiry, so too should the apparently well-documented,
17 corroborated, and otherwise unrebutted factual details contained in the present *Times* article

⁷¹ See Isabel Vincent and Melissa Klein, *Grimm "Funneled" Illegal Campaign Cash Through Rabbi*, N.Y. POST, Oct. 26, 2014, <http://nypost.com/2014/10/26/grimm-funneled-illegal-campaign-cash-through-rabbi/> (reporting that Grimm wrote in an e-mail to Pinto's organization, "I think that if the Rabbi calls the six people and asks them to each write one check for the \$10,000, then we can finish this in the next few days." . . . 'I can raise \$120-\$130 [thousand], but I must have the other \$60,000 as soon as possible. Please e-mail me back, as I am very nervous and concerned about the final amounts of money'").

⁷² Comm'n Memo No. 663 at 1 ("[T]he complainant's belief that a violation of the FECA has occurred might be based on a well documented article or series of articles, such as those describing the Watergate scandal.").

1 serve as an adequate basis to find reason to believe that the Respondents may have violated the
2 Act, subject to further factual inquiry of the Commission.⁷³

3 **III. PROPOSED INVESTIGATION**

4 We propose to investigate Biton's and Grimm's involvement in the alleged scheme
5 regarding prohibited contributions, as well as Grimm's acceptance of cash contributions, and
6 Biton's and Grimm's solicitation or direction of impermissible funds.

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⁷³ In addition to the specifically described and largely unrefuted factual details that form the basis of the Complaint's allegations, the credibility of those allegations would further seem to be adequate — notwithstanding the anonymous nature of some of the sources — at least at this preliminary stage of the Commission's inquiry, given the journalistic standards that the *Times* has established for using unnamed sources. See N.Y. Times Co., 2004 Confidential News Sources Policy, http://www.nytimes.com/company/business_units/sources.html (last visited Dec. 2012), available at http://www.abc.net.au/mediawatch/transcripts/0726_nyt.pdf (hereinafter N.Y. Times Co., 2004 Confidential News Sources Policy); see also N.Y. Times Co., 2008 Guidelines on Integrity, <http://www.nytimes.com/wp-content/uploads/Guidelines-on-Integrity-updated-2008.pdf> ("The use of unidentified sources is reserved for situations in which the newspaper could not otherwise print information it considers newsworthy and reliable. . . . The *Times* does not dissemble about its sources — does not, for example, refer to a single person as 'sources'").

Specifically, the *Times* policy provides that during routine interviews "anonymity should not be offered to a source" unless the interview involves "the reporting of highly sensitive stories, when it is we who have sought out a source who may face legal jeopardy or loss of livelihood for speaking with us." N.Y. Times Co., 2004 Confidential News Sources Policy. Moreover, "Confidential sources *must have direct knowledge of information they are giving us.*" *Id.* (emphasis added). That appears to be the case here; the individuals recounted their own interactions with Biton and Grimm. Finally, the *Times* provides that "when we grant anonymity for less verifiable assertions — especially if they form a disputed account, or are potentially damaging to one side of a court case, for example — corroborating sources are often necessary." Here, the article asserts that the *Times* conducted fifteen interviews with followers and associates of Rabbi Pinto, and quoted at least one source with apparent personal knowledge by name, Yossi Zaga, underscoring the efforts taken to substantiate and corroborate the facts reported. Ex. 1 at 1.

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IV. RECOMMENDATIONS

1. Find reason to believe that Michael Grimm and Michael Grimm for Congress and Lisa Lisker in her official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A));
2. Find reason to believe that Michael Grimm and Michael Grimm for Congress and Lisa Lisker in her official capacity as treasurer knowingly and willfully violated 2 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f));
3. Find reason to believe that Michael Grimm and Michael Grimm for Congress and Lisa Lisker in her official capacity as treasurer knowingly and willfully violated 11 C.F.R. § 110.4(c)(2);
4. Find reason to believe that Michael Grimm for Congress and Lisa Lisker in her official capacity as treasurer violated 2 U.S.C. § 30104(b)(3)(A) (formerly 2 U.S.C. § 434(b)(3)(A));


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5. Find reason to believe that Unknown Respondent A violated 52 U.S.C. § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A));
6. Find reason to believe that Unknown Respondent A violated 52 U.S.C. § 30123 (formerly 2 U.S.C. § 441g) and 11 C.F.R. § 110.4(c)(1);
7. Find reason to believe that Unknown Respondent B violated 52 U.S.C. § 30121(a)(1)(A) (formerly 2 U.S.C. § 441e(a)(1)(A));
8. Find reason to believe that Ofer Biton knowingly and willfully violated 52 U.S.C. § 30121(a)(2) (formerly 2 U.S.C. § 441e(a)(2));
9. Find reason to believe that Michael Grimm and Michael Grimm for Congress and Lisa Lisker in her official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30121(a)(2) (formerly 2 U.S.C. § 441e(a)(2));
10. Find reason to believe that Unknown Respondent B violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f);
11. Find reason to believe that Unknown Respondent C violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) and 11 C.F.R. § 110.4(b)(iii);
12. Find reason to believe that Michael Grimm and Michael Grimm for Congress and Lisa Lisker in her official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) and 11 C.F.R. §§ 110.4(b)(iv) and 110.6(c)(2);
13. Find reason to believe that Ofer Biton knowingly and willfully violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) and 11 C.F.R. § 110.4(b)(iii);
14. Find reason to believe that Ofer Biton knowingly and willfully violated 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A));
15. Take no action at this time regarding allegations that Biton violated 11 C.F.R. § 110.6;
16. Take no action at this time with respect to Rabbi Yoshiyahu Yosef Pinto;
17. Take no action at this time with respect to Mosdot Shuvah Israel Synagogue;
18. Approve the attached Factual and Legal Analyses;
19. Approve the use of compulsory process; and

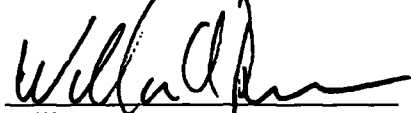
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20. Approve the appropriate letters.

Date: 10-30-14



Daniel A. Retalas
Associate General Counsel for Enforcement



William A. Powers
Assistant General Counsel



Emily M. Meyers
Attorney